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APPLICATION NO. 09/333,095	FILING DATE 06/15/99	FIRST NAMED INVENTOR KNIGHT	ATTORNEY DOCKET NO. NVI-5044
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000321 IM22/1025
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EXAMINER BHAT, N

ART UNIT 1761	PAPER NUMBER 2
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DATE MAILED: 10/25/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/330,095

Applicant(s)

Knight et al.

Examiner

N. Bhat

Group Art Unit

1761



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-11 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-11 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1761

DETAILED ACTION

1. Applicant is thanked for faxing the examiner the claims of the parent, IDS and 892 so that the examiner could properly review the allowed claims prior to issuing an office action as the Parent was unavailable.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-11 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-12 of copending Application No. 08/900,414 now allowed US Patent pending. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

Art Unit: 1761

A process for formulating a ruminant food ration comprising the steps of determining the methionine needs of the ruminant, identifying a plurality of natural or synthetic feed ingredients and the nutrient composition of each of the ingredients where one of the ingredients is a hydroxy analog of methionine specifically 2-hydroxy-4-(methylthio)butanoic acids or its salts or its amines or its esters thereof. The difference between the instant case and the 08/900,414 is that the instant case does specifically recites alkaline earth salts of 2-hydroxy-4-(methylthio)butanoic acid, alkane esters of 2-hydroxy-4-(methylthio)butanoic acid, alkane amines of 2-hydroxy-4-(methylthio)butanoic acid, and oligimers of 2-hydroxy-4-(methylthio)butanoic acid whereas the 08/900,414 is a broader recitation of the hydroxy analog of methionine, and to use applicant's specific 2-hydroxy-4-(methylthio)butanoic acids analogs from a broad recitation of hydroxy analogs of methionine selected from the group consisting of 2-hydroxy-4-(methylthio)butanoic acid salts, amines and esters thereof which in fact overlaps in scope.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

4. Applicant is cautioned that when reading the Markush group of claim 1 and then reading claim 1 and 2 of the allowed 08/900,414, if the public would select "2-hydroxy-4-(methylthio)butanoic acid" from the Markush grouping of the instant invention the claim would be

Art Unit: 1761

claim 1-2 of the allowed 08/900,414 would be same invention and subject to a same invention type double-patenting. Suitable Correction is required.

5. Claims 1-11 are free of the prior art.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cummings et al. teach a process for preparing a dietary fatty acid salt supplement composition which functions as a rumen bypass animal feed supplement and permits an increase in the nutrient fat content of the feed. Lajoie teach a high purity particulate fatty acid salt product which is a calcium salt derivative of a fatty acid mixture obtained from vegetable oil and animal tallow. Mead teaches a water insoluble calcium or magnesium salt of alpha amino acids and the process for their preparation. Hijiya et al. teach a ruminant feed additive composition which includes a phosphoric acid-amino acid polyvalent metal composite salt. Nocek et al. ['791 and '891] teach a method of formulating dairy cow rations based on regulation of the content of non-structural carbohydrates. Vinci et al. [5,456,927 and WO 95/12987] teach a process for preparing a fatty acid calcium salt ruminant feed supplement product which contains a methionine hydroxy analog calcium salt additive.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nina Bhat whose telephone number is (703) 308-3879. The examiner can normally be reached on Mondays-Fridays from 9:20 AM to 6:00 PM.


The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602.

Application/Control Number: 09/333,095

Page 5

Art Unit: 1761

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.


NINA BHAT
PRIMARY EXAMINER
GROUP 1900-1700